IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6226 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.S.R.T. CORPORATION

Versus

K.M. PARMAR

Appearance:

1. Special Civil Application No. 6226 of 1993

MR HARDIK C RAWAL for Petitioner No. 1

MR RV DESAI for Respondent No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/08/2003

ORAL JUDGEMENT

Heard learned advocate Mr.Hardik C.Rawal on behalf of the petitioner and learned advocate

Mr.R.V.Desai for respondent workman.

In the present petition, the petitioner Corporation has challenged the award passed by the Industrial Tribunal, Baroda in Reference I.T. No.109 / 1988 dated 30th January, 1993, wherein, the Industrial Tribunal has set aside the punishment order of stoppage of three increments with cumulative effect imposed by the competent authority vide order dated 27th July, 1982, with a direction to the Corporation to make payment of arrears within three months with 9 % interest to the respondent conductor and it was made clear that if the corporation has not recovered a sum of Rs.15.30 ps from the respondent conductor, then the same should have been deducted from the salary of the respondent conductor.

Initially, in the present petition, Rule has been issued by this Court on 24th August, 1993 but no interim relief granted by this Court at the time of issuing Rule.

Learned advocate Mr.H.C.Rawal for the petitioner Corporation has submitted that the respondent conductor has committed misconduct while issuing unpunched tickets to the passengers of Rs.7/- and at the time of checking of the bus, Rs.15.30 found to be deficit in the traffic cash of the respondent workman. Therefore, after serving the chargesheet on the workman and on completion of the departmental inquiry, vide order dated 27th July, 1982 the competent authority imposed punishment of stoppage of three increments with cumulative effect. Learned advocate Mr.Rawal submitted that the competent authority has come to the conclusion that the charge levelled against the workman is found to be proved and considering his past record and the explanation given by the workman, the competent authority has not passed the order of dismissal but awarded the punishment of stoppage of three increments with cumulative effect as per the order passed by the competent authority and therefore, the tribunal has committed gross error while setting aside the punishment imposed by the competent authority and directing the Corporation to pay the arrears to the respondent workman with 9 % interest which is also on higher side. He also submitted that the industrial tribunal has committed gross error which finds apparently on the face of record and therefore, interference by this Court is necessary.

Learned advocate Mr.R.V.Desai for the respondent workman has submitted that the Industrial Tribunal has rightly appreciated the evidence and finding given by the competent authority and come to the conclusion that there

is no mala fide intention of the respondent conductor workman and whatever the shortage found to be deficit, same might have occurred because of bonafide mistake of the workman while issuing the tickets and collecting the fares. Therefore, both the misconducts are not serious in nature and bonafide mistake committed by the workman which has been rightly appreciated by the tribunal and on that basis,the tribunal has rightly set aside the order of punishment and once the punishment order is set aside, naturally, it is discretion of the tribunal to grant arrears with 9 % interest which is just and proper in the facts and circumstances of the case and therefore, no interference of this Court is required and the petition preferred by the petitioner may be rejected accordingly.

I have considered submissions made by the learned advocates for the parties. This Court has also perused the punishment order dated 27th July, 1982 and the finding given by the competent authority as well as the award passed by the Industrial Tribunal. The tribunal has given reasoning in support of its conclusion at page.12 in para-1 that unpunched tickets issued by the conductor to the passengers but that tickets found to have noted in the way bill, meaning thereby, the respondent conductor having no any bad intention to reissue the said tickets in the next trip. If any ticket is sold and declared in the way bill, then the conductor shall make necessary payment according to the way bill and therefore, the workman had not intention to reissue such tickets. The tribunal has also considered that the bus was going to Ahmedabad to Amod and Amod was the last stand of the route and because of that it was very difficult to have any presumption against the respondent workman that he will recover the tickets to reissue the said tickets in another trip. Therefore, the tribunal has analyzed the evidence and come to the conclusion that there is no bad intention on the part of the respondent conductor for issuing unpunched tickets to the passengers. It is also necessary to note that at the time of checking of the bus, unpunched tickets in question were found from the passengers and not from the conductor. So far as the shortage / deficit of Rs.15.30 ps found from the traffic cash, explanation has been given by the respondent workman, believed by the tribunal and the tribunal has observed that it might have happened that while issuing the tickets and collecting the fare from the passengers, some bonafide mistake might have been committed on the part of the respondent workman and that resulted into shortage of traffic cash and the same cannot be said to be considered to be serious misconduct. Considering these two aspects, according to the tribunal, punishment which has been imposed by the petitioner

Corporation on the respondent workman conductor by order dated 27th July, 1982 is illegal and contrary to the evidence and the Corporation has not believed the explanation given by the conductor in departmental inquiry. Therefore, according to the tribunal, the entire punishment is based on presumption and no detailed reason has been given by the competent authority. Therefore, the tribunal has set aside the punishment order and also granted 9 % in favour of the respondent workman because punishment itself is unjustified and found to be illegal by the tribunal and therefore, naturally, the amount of arrears denied to the workman for the period from 27th July, 1982 to 30th January, 1993 is ordered to be paid to the workman with interest @ 9 % within three months. However, the tribunal has granted liberty to the petitioner Corporation to deduct a sum of Rs.15.30 ps from the salary of the respondent workman if so far not deducted. Therefore, considering the entire matter and the facts and circumstances of the case and the finding and reasoning given by the tribunal, according to my opinion, the tribunal has rightly passed the award in question while setting aside the punishment order passed against the respondent workman. As such, there is no procedural irregularity committed by the tribunal and the finding give by the tribunal is based upon appreciation of evidence and therefore, the award in question is just and proper, which in any way, does not warrant for interference of this Court while exercising the powers under Article 227 of the Constitution. Therefore, there is no substance in the present petition and the same is rejected accordingly.

In view of above discussion, this petition does not succeed and the same is rejected accordingly.

Rule discharged with no order as to costs.

However, at this stage, learned advocate Mr.Desai requests for some suitable direction on the respondent for implementation of the award in question. Considering the request made by the learned advocate Mr.Desai, the petitioner Corporation is directed to implement the award in question and shall make necessary payment of arrears along with 9 % interest as per the directions of the tribunal to the respondent workman if so far not implemented, within two months from the date of receipt of copy of this order.

Date : 5.8.2003 [H.K.Rathod, J.]

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